IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.21535 of 2001

1. A.Shanmugam
2. P.Arivalagan
3. M.Muruganandam
4. S.Pugalendi .. Petitioners

vs.

1. The Commissioner and Director of
   Survey and Settlement,
   Chepauk, Chennai-5.

2. The Assistant Director of Survey
   and Land Records,
   Namakkal District,
   Collectorate,
   Namakkal.

3. The Registrar,
   Tamilnadu Administrative Tribunal,
   Chennai-104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order in O.A.No.6971 of 2001, dated 31.10.2001 on the file of the Registrar, Tamilnadu Administrative Tribunal, Chennai-104, the third respondent herein and the impugned order No.Na.Ka.Ma4/10627/2001 (Ni.a), dated 20.10.2001 and quash both the orders as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the first and second respondents herein to retain the petitioners at Namakkal District itself.

For petitioners : Mr.S.Srinivasan
For respondents 1 and 2: Mr.M.Dhandapani, Spl.G.P.

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ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

The petitioners are aggrieved by the order of the TamilNadu Administrative Tribunal, dated 31.10.2001 passed in O.A.No.6971 of 2001.

2. The petitioners were all working in the Survey Department of Salem District Unit, when Namakkal was part of the said District. By G.O.Ms.No.675, Revenue Department, dated 25.7.1996, Namakkal District was carved out from Salem District and a new District was formed. On formation of the new Namakkal District, various employees based on their working as well as consent in the Survey Department, were all allotted to Namakkal District by proceedings dated 29.9.1999. There were 23 cadre posts of Sub-Inspector of Survey, allotted to Namakkal District from Salem District. In order to attend to the work of land acquisition relating to Salem-Karur Braod Guage Railway Line as well as land acquisition for Namakkal Metro Development Project, five more posts in the cadre of Sub-Inspector of Survey were allotted outside the cadre strength. The Additional Director of Land Survey Settlement in his proceedings dated 12.10.1999, addressed to the Assistant Director of Survey and Land Records, Salem, directed to allot five more Sub-Inspectors of Survey outside the cadre strength along with incumbents to Namakkal District. Thereafter, by proceedings dated 22.10.1999, Assistant Director of Survey and Land Records, Salem District, allotted five ex-cadre posts by shifting the posts along with the incumbents, namely A.Shanmugam, I.Chinnasamy, P.Arivazhagan, M.Muruganandam and V.Raja Gounder. While shifting the above persons along with ex-cadre posts, it was made clear to them in the said proceedings that in the event of the dismantling of five ex-cadre posts in the Namakkal District and any reversion taking place to the said individuals, they cannot claim any right in Salem District. Since one of the persons, by name Thiru.I.Chinnasamy sought for retention in Salem District itself due to family circumstances, by another proceedings dated 27.10.1999, one Thiru.S.Pughazhenthi, the fourth petitioner herein, who was functioning as Sub-Inspector of Survey in Yercaud Division, was allotted to Namakkal District along with the post.

3. Net result of the above three proceedings was that to fill up five ex-cadre posts of Sub-Inspector of Survey in Namakkal, the petitioners herein and one Thiru.V.Raja Gounder who were holding similar such ex-cadre posts of Sub-Inspector of Survey in Salem District, were transferred to Namakkal

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District, "lock, stock and barrel". Further, by virtue of such shifting of the ex-cadre posts to fill up the existing vacant five ex-cadre posts in Namakkal District, five ex-cadre posts in Salem District got extinguished and the same got merged with the said vacant posts in Namakkal District.

4. That apart, having regard to the specific stipulation contained in the orders dated 22.10.1999 and 27.10.1999, the persons who were shifted along with the posts, got their lien in Salem ex-cadre posts terminated by accepting and joining the ex-cadre posts in Namakkal District.

5. In the above said background, the proceedings dated 20.10.2001 came to be issued, whereby the Director's proceeding dated 12.10.1999 was sought to be cancelled and the petitioners as well as Thiru.V.Raja Gounder along with their ex-cadre posts, were sought to be retransferred to Salem District. The said proceedings dated 20.10.2001 also indicated that it was open for Namakkal District Administration to fill up five ex-cadre posts created with the available eligible persons.

6. When the petitioners challenged the said proceedings dated 20.10.2001, the Tribunal, by the order impugned, held that the rights of the petitioners were not infringed. The Tribunal also took the view that only the persons alone were transferred to Namakkal District and the posts were not transferred from Salem to Namakkal District.

7. After hearing learned counsel for the petitioners and learned Special Government Pleader, we are of the view that the reasoning of the Tribunal cannot be accepted. Shifting of five ex-cadre posts from Salem to Namakkal District along with the persons, was ordered by the first respondent in his proceedings dated 12.10.1999. A reading of the said proceedings dated 12.10.1999 makes it abundantly clear that the shifting was not merely the persons, but the persons along with the posts. As we have held earlier, by virtue of such shifting ordered by the first respondent in his proceedings dated 12.10.1999 and the passing of the consequential order by the second respondent, dated 22.10.1999 and 27.10.1999, five ex-cadre posts which were hitherto existing in Salem District, on the transfer of posts along with the persons to Namakkal District, got totally extinguished. In other words, after the proceedings dated 12.10.1999 of the first respondent and the proceedings of the second respondent, dated 22.10.1999 and 27.10.1999, five ex-cadre posts in Salem District no longer remain and that it got merged with five other ex-cadre posts which were lying vacant in Namakkal District. When once that

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merger of posts had taken place in the ex-cadre posts of Sub-Inspector of Land Survey, it is not open for the first respondent to come forward with the present proceeding dated 20.10.2001 by seeking to cancel their own earlier proceedings dated 12.10.1999.

8. In the above context, it would be worthwhile to refer to F.R.14-A of the Fundamental Rules of the Tamil Nadu Government, wherein we find an implied prohibition in resorting to such action, as is sought to be now made by the first respondent in the present proceeding dated 20.10.2001. Under F.R.14-A(a) of the Fundamental Rules, it is stipulated that except as provided in Clauses (c) and (d) of that Rule, a Government servant's lien on a post may, in no circumstances be terminated, even with his consent. Sub-Clause (d) to F.R.14-A states that the Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Government or the Central Government or any other State Governments) outside the cadre on which he is borne. In the event of happening of circumstances as contemplated in Sub-Clause (d) to F.R.14-A, there could still be a termination of a Government servant's lien on a post.

9. In the case on hand, all the petitioners originally had a lien on an ex-cadre post which was existing in Salem District Unit. By virtue of the shifting ordered by the first respondent in his proceeding dated 12.10.1999, whereby five ex-cadre posts along with the individuals were shifted to the existing five vacant ex-cadre posts in Namakkal District and the assumption of office by such persons in Namakkal District Unit, the operation of Sub-Clause (d) of F.R.14-A automatically came into effect. Therefore, when F.R.14-A(d) was allowed to operate, there was no question of those individual officers being brought back to non-existing posts, even if it is ex-cadre in Salem District, inasmuch as the lien in that post stood automatically terminated by virtue of shifting of the posts along with the persons as ordered by the first respondent on 12.10.1999.

10. Therefore, by virtue of operation of F.R.14-A(a) and (d), as well as for various other reasons set out above, we find that the impugned order of the first respondent dated 20.10.2001 in seeking to re-transfer the petitioners back to Salem Unit, was not permissible in law, and therefore, the said proceeding was liable to be set aside. Moreover, by resorting to such re-transfer, the petitioners would have been seriously prejudiced, as the service conditions of the petitioners after their shifting to Namakkal Unit would have been far more beneficial than what was existing in Salem

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District Unit prior to the shifting which was ordered on 12.10.1999, 22.10.1999 and 27.10.1999.

11. For all the above said reasons, the impugned order of the Tribunal, dated 31.10.2001 passed in O.A.No.6971 of 2001 and that of the first respondent dated 20.10.2001 are set aside. The Writ Petition stands allowed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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Copy to

1. The Commissioner and Director of
   Survey and Settlement,
   Chepauk, Chennai-5.

2. The Assistant Director of Survey
   and Land Records,
   Namakkal District,
   Collectorate,
   Namakkal.

3. The Registrar,
   Tamilnadu Administrative Tribunal,
   Chennai-104.

+1CC TO Mr.S.Srinivasan, Advocate Sr 38142
+1cc to the Govt. Pleader High Court, Madras Sr 38471

LA (CO)
km/5.7.

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